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U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

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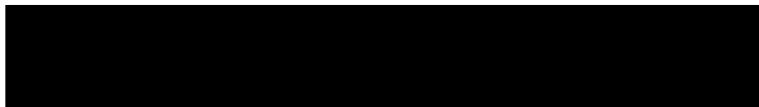
ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS; AAO, 20 Mass, 3/F
Washington, D.C. 20536



JUN 05 2003

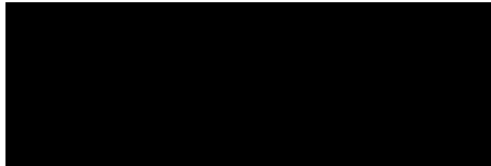
File: WAC-01-174-52625 Office: California Service Center Date:

IN RE: Petitioner:
Beneficiary:



Petition: Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the "Act"), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

ON BEHALF OF PETITIONER:



**Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The immigrant visa petition was denied by the Director, California Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a church. It seeks classification of the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), in order to employ him as a deacon at an annual salary of \$2,400 plus room and board.

The director denied the petition finding that the beneficiary's claimed service with the petitioner did not satisfy the statutory requirement that he have been continuously carrying on a full-time salaried religious occupation for at least the two years preceding the filing of the petition.

On appeal, counsel for the petitioner submitted a brief arguing that the regulations do not require that the prior experience be in a paid capacity and that the beneficiary's position is a qualifying religious occupation according to the regulations.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C), which pertains to an immigrant who:

- (i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;

- (ii) seeks to enter the United States--

- (I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,

- (II) before October 1, 2003, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or

- (III) before October 1, 2003, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Code of 1986) at the request of the organization in a religious vocation or occupation; and

(iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

The petitioner in this matter is an Apostolic Church. It has disclosed that it has 54 members in its congregation and an unspecified number of employees. The beneficiary is described as a native and citizen of Mexico who last entered the United States in 1996 in an undisclosed manner. The record therefore reflects that the beneficiary has resided in the United States in an unlawful status since entry. The petitioner disclosed at the space provided on the petition form that the beneficiary has worked in the United States without authorization.

The issue to be examined in this proceeding is whether the petitioner has established that the beneficiary has had the requisite two years of continuous work experience in the proffered position.

Regulations at 8 C.F.R. § 204.5(m)(1) state, in pertinent part, that:

All three types of religious workers must have been performing the vocation, professional work, or other work continuously (either abroad or in the United States) for at least the two year period immediately preceding the filing of the petition.

The petition was filed on April 20, 2001. Therefore, the petitioner must establish that the beneficiary had been continuously engaged in a religious occupation for at least the two years since April 20, 1999.

The petitioner's pastor, stated, in pertinent part, in a letter dated April 9, 2001, that:

[The beneficiary] was baptized into our religious faith in 1990 at the New Life Apostolic Church in San Ysidro, California. He has served our congregation as a volunteer since August 1996. [The beneficiary] provides counseling to members of our congregation with substance abuse problems and/or moral concerns. He encourages parishioners to follow Christ's example to make positive changes in their lives. Throughout 1998-1999, [the beneficiary] began to assume some of the deacon's duties. Additionally, [the beneficiary] has satisfactorily completed a formal academic and vocational training program for deacons and teachers of our faith.

In response to the Bureau's request for additional evidence, the petitioner's pastor stated, in pertinent part, that:

Your correspondence asks for information about the beneficiary's work history from April 26, 1999 to April 26, 2001. [The beneficiary] worked for our church in San Diego for the entire duration of this period as deacon. He worked for our church on a full-time basis. He spent a minimum of 35 hours per week working for our church. While he was not paid a salary, we provided [the beneficiary] with housing, meals, and clothing on an as needed basis. We continue to do so. [The beneficiary] has not performed any other work outside the church. He has been supported entirely by our church.

On appeal, the petitioner's counsel stated that neither the law nor regulations require that the two-year work experience be gained through paid employment in order to qualify for Special Immigrant classification. Counsel asserts that the only requirement is that the previous vocation or occupation be continuous. Counsel cites a court decision that has no precedential effect in this proceeding. See 8 C.F.R. 103.3(c).

The statute and its implementing regulations require that a beneficiary had been continuously carrying on the religious occupation specified in the petition for the two years preceding filing. The regulations are silent on the question of volunteer work satisfying the requirement. The pertinent regulations were drafted in recognition of the special circumstances of some religious workers, specifically those engaged in a religious vocation, in that they may not be salaried in the conventional sense and may not follow a conventional work schedule. The regulations distinguish religious vocations from lay religious occupations. 8 C.F.R. § 204.5(m)(2) defines a religious vocation, in part, as a calling to religious life evidenced by the taking of vows. While such persons are not employed *per se* in the conventional sense of salaried employment, they are fully financially supported and maintained by their religious institution and are answerable to that institution. The regulation defines lay religious occupations, in contrast, in general terms as an activity related to a "traditional religious function." *Id.* Such lay persons are employed in the conventional sense of salaried employment. The regulations recognize this distinction by requiring that in order to qualify for special immigrant classification in a religious occupation, the job offer for a lay employee of a religious organization must show that he or she will be employed in the conventional sense of salaried employment and will not be dependent on supplemental employment. See 8 C.F.R. § 204.5(m)(4). Because the statute requires two years of continuous experience in the same position for which special immigrant classification is sought, the Bureau interprets its own regulations to require that, in cases of lay persons seeking to engage in a religious occupation, the prior experience must have been full-time salaried employment in order to qualify as well.

Furthermore, in evaluating a claim of prior work experience, the Service must distinguish between common participation in the religious life of a denomination and engaging continuously in a religious occupation. It is traditional in many religious organizations for members to volunteer a great deal of their time serving on committees, visiting the sick, serving in the choir, teaching children's religion classes, and assisting the ordained ministry without being considered to be carrying on a religious occupation. It is not reasonable to assume that the petitioning religious organization, or any employer, could place the same responsibilities, the same control of time, and the same delegation of duties on an unpaid volunteer as it could on a salaried employee. Nor is there any means for the Bureau to verify a claim of past "volunteer work" similar to verifying a claim of past employment. For all these reasons, the Bureau holds that lay persons who perform volunteer activities, especially while also engaged in a secular occupation, are not engaged in a religious occupation and that the voluntary activities do not constitute qualifying work experience for the purpose of an employment-based special immigrant visa petition.

In this case, the petitioner has asserted that the beneficiary has performed voluntary, non-salaried services for it since 1996. For the reasons discussed above, such activities do not constitute continuous experience in a religious occupation. The Bureau is therefore, unable to conclude that the beneficiary had been engaged in a full time religious occupation during the two-year qualifying period. For this reason, the petition may not be approved.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.